Supreme Court, U. S.
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No. 78-341

IN THE

Supreme Court of the United States

October Term 1978

DONALD L. MAINS and JOYCE G. MAINS, *Petitioners*

vs.

UNITED STATES OF AMERICA, *Respondent.*

F. E. GOODING, *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent.*

REPLY BRIEF

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INTRODUCTION

It appears that the Memorandum For the United States in Opposition to the Petition for a Writ in these cases filed by the Solicitor General was beyond the time prescribed by Rule 24 of this Court. On the assumption that the Court may consider said memorandum in its deliberation of the fate of the Petition the following short reply respecting new matter is presented.

REPLY

In the course of arguing and briefing these cases at the trial and appellate level, Petitioners have always recognized the propriety and sometimes the necessity of examining conduct occurring in tax years subsequent to the years before the Court in determining the authenticity and genuineness of a particular transaction before the Court. *Estate of William G. Maguire* 50 TC 130 (1968). This was uniquely so in analysing a transaction under the partial liquidation provisions of Sec. 346 (a)(1) of the Internal Revenue Code of 1954.

The Solicitor General in his memorandum has now crystalized the basic conflict involved and interjected an entirely new concept (principle) into the already unsettled waters of what constitutes a "tax year" and what, if any, "integrity" it is to be accorded.

Arrowsmith v. Commissioner 344 U.S. 6 (1952) and *United States v. Skelly Oil* 394 U.S. 678 (1969) both stand for the shaky rule that the characterization of a taxable transaction in a given year can be governed by the tax treatment of events occurring in previous years. (Note the vigorous dissents in these cases.) Our Government now cites this as authority for the proposition that events occurring in years subsequent to those before the Court can determine for tax purposes the characterization of transactions occurring in prior years.

Petitioners suggest that the thrust of the Government's argument represents yet another erosion and disintegration of both the legislative and this Court's purpose in according a reasonable degree of honor and integrity to the concept of annual accounting.

The impact of leaving this problem unresolved is enormous both from the standpoint of maintaining a fair and equitable administration of the tax code as well as giving at least a modicum of assurance to taxpayers in ordering their personal and economic lives.

The dilemma may be best summed up by the comment of one of our leading tax authorities as follows: "The extent to which the Arrowsmith decision has driven a wedge into the doctrine of the single year as a unit of taxation remains unanswered." Mertens, *Law of Federal Income Taxation*, Sec. 12.06, fn. 78.1.

It is therefore respectfully submitted that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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